



## Office of the Attorney General

State of Texas

April 30, 1993

DAN MORALES

ATTORNEY GENERAL

Mr. Charles E. Griffith, III  
Deputy City Attorney  
City of Austin  
P.O. Box 1088  
Austin, TX 78767-8828

OR93-220

Dear Mr. Griffith:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 18991.

The City of Austin received a request for copies of personnel records for a former assistant city attorney. You claim that the documents are excepted from required public disclosure by section 3(a)(3), the litigation exception.

Section 3(a)(3) excepts from disclosure information that relates to pending or anticipated litigation. Open Records Decision No. 551 (1990). This exception provides a mechanism by which a governmental body can protect its position in litigation, and requires that the opposing party obtain the information through the discovery process. *Id.* at 3. However, once the documents are made available to the other parties in litigation, section 3(a)(3) cannot be invoked to shield the information from public disclosure. *Id.* at 4. We have inspected the documents you submitted for our review and we agree that they relate to pending litigation. Therefore, you may withhold the documents, assuming that the opposing parties in the litigation have not had prior access to them.

The requestor submitted a written authorization from the former assistant city attorney to obtain his personnel records. This authorization may seem to implicate sections 3(a)(2) and 3B(a), which provide to a person or an authorized representative a special right of access to private information about that person. However, these sections do not grant a special right of access to information which may be protected from disclosure by other exceptions in the Open Records Act. Open Records Decision Nos. 565 (1990); 288 (1981). Therefore, sections 3(a)(2) and 3B(a) do not override section 3(a)(3) under these circumstances.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR93-220.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Opinion Committee

LRD/MRC/le

Ref.: ID# 18991

Enclosures: Open Records Decision No. 551  
submitted documents

cc: Larry J. Dowling, Esq.  
2003 North Lamar  
Austin, Texas 78705  
(w/o enclosures)